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Filing date: **08/12/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053298
Party	Defendant Kimberly Kearney
Correspondence Address	KIMBERLY KEARNEY HOLLYWOOD SOUTH LLC 17216 SATICOY STREET, SUITE 235 VAN NUYS, CA 91406 UNITED STATES kimk@hollywoodsouthproductions.com,production@hollywoodsouthproductions.com
Submission	Other Motions/Papers
Filer's Name	Kimberly Kearney
Filer's e-mail	kimk@hollywoodsouthproductions.com
Signature	/Kimberly Kearney/
Date	08/12/2013
Attachments	Kearney Mtn for TRIAL EXTENSION.pdf(130566 bytes) Email to Tyler's Attorney- Pg1.pdf(181216 bytes) Email to Tyler's Attorney- Pg2.pdf(151268 bytes) Email to Tyler's Attorney- Pg3.pdf(150431 bytes) 2nd Email to Tyler's Attorney- Pg1.pdf(134824 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TYLER PERRY STUDIOS, LLC,
Petitioner,

Cancellation No. 92053298

v.

KIMBERLY KEARNEY,
Respondent

**RESPONDENT'S MOTION FOR EXTENSION OF TIME FOR
DEFENDANT'S TRIAL PERIOD**

Respondent, Kimberly Kearney ("Kearney"), hereby files her Motion for Extension Of Time For Defendants Testimony Period, and in support thereof, states as follows:

1. I have appeared as a *pro se* litigant throughout this matter, in hopes of successfully defending at minimal financial cost what appears to be a baseless cancellation proceeding filed by Petitioner. Although I have limited financial means, I honestly believed that I could adequately represent myself and defend Petitioner's cancellation proceeding.

2. However, it has become increasingly clear to me that I can no longer adequately represent myself in this matter specifically at this stage in the proceeding, because it is required by law that only someone who as the legal authority to swear in witnesses is allowed to take testimony, which of course, I am not.

Though I have sought out many companies that provide deposition services, many will not take me on as a client, just because I do not have legal representation. They only work with licensed attorneys. Nevertheless, I have been relentless in my search to find a company who will do this for me, which I did finally find one, this week. But then only to discover that the witnesses that I have listed in my pre-trial disclosures, and wanted to depose because they have material information regarding this case, are now unwilling to testify, at least voluntarily.

Therefore, I am forced to now exercise my legal right to subpoena them, to force them to do so. One in particular who is critical to this case, and is also the one who initiated this cancellation proceeding, Tyler Perry, owner of TPS Studios, has failed to provide me with an available date for his deposition, though I have now requested this in writing in two separate emails to his attorney, who is also the attorney of record, Victor Sapphire, who is also representing the Plaintiff and his own company, TPS Studios, in the cancellation proceeding. After my 1st attempt via email on July 19th, to secure a date for his deposition was ignored, I sent a 2nd email, and his attorney's response to me via email was and I quote, "Your intention to depose Mr. Perry, who does not possess knowledge relevant to the issues in this proceeding, is merely for the purpose of harassment".

This is totally absurd, as I am only exercising my legal right to show that he has first hand knowledge regarding this case and my use of the mark in question.

Additionally, some of the other witnesses listed in my pretrial disclosures, who also have material information, as well, have mysteriously disappeared and/or refused contact with me now because they feel intimidated and at personal and/or professional risk, if they voluntarily agree to witness on my behalf, though they initially agreed to do so as late as 1 month ago. One witness I planned to depose, who actually worked with the Plaintiff, has even said, "I won't testify unless you subpoena me, so I can say I was forced to testify, and not appear to have betrayed the Plaintiff, who is so powerful, and influential in this business". This is the obstacle I have faced throughout this proceeding, even while seeking legal representation in this matter.

3. Additionally, I also proposed in writing via the first email I sent to the Plaintiff, via the email address of record on the Plaintiff's attorney's correspondence w/the TTAB, that I was

also proposing that we settle this matter amicably, because I also feel intimidated by the Plaintiff. Though it was never my desire initially, I stated that I would consider a restrictive use of the mark for myself, so my mark would not block his use, and we can find a way to co-exist. This initial email was sent on July 19, 2013- copy attached. Again I did not receive a response.

I then sent a 2nd request for a date Mr. Perry would be available for deposition in lieu of us working out a co-existence arrangement, and received a reply on August 9, 2013, stating that my proposal for restrictive use was being considered, but my intention to depose Mr. Perry was harassment. I don't know if they truly are willing to consider the restrictive use offer I proposed, which I sincerely hope so, but it also may be just a tactic to give me false hope and stall me so that I am unable to meet the deadline to depose the witnesses I need to, including Mr. Perry, in order to defend my mark. I have yet to this day, received any follow up with a date Mr. Perry will be available for testimony, nor a response to my offer to settle this matter amicably between us.

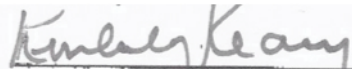
4. Accordingly, in light of the upcoming August 20, 2013 30-day Defendant's Trial Period deadline, and in order to ensure adequate due process, I respectfully request this Board grant me an extension of my trial period for 90 days, so that I can have a processor legally file any and all necessary subpoenas, and also allow them the time they requested to locate witnesses who now are intentionally trying to avoid cooperating and being de-posed.

5. Additionally, I respectfully request that this Board issue an amended scheduling order in light of the 90-days requested for this extension. I believe that an amended scheduling order will be necessary to ensure that not only the testimony can be taken, but also transcripts can be prepared to provide to the board and plaintiff as required, as well as allow time for preparation of any supporting evidence that may be discovered as a result of the depositions.

6. This Motion is not being filed for purposes of delay, as I am very eager to have this issue resolved. It has been one of the most horrific, stressful, and taxing experiences of my entire life. And I am anxious to have this resolved, so that I may rightfully and lawfully continue to use my trademark.

7. I will suffer great prejudice should this extension be denied, whereas Petitioner will not suffer any prejudice from a grant of this requested extension.

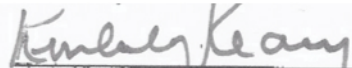
Respectfully submitted,



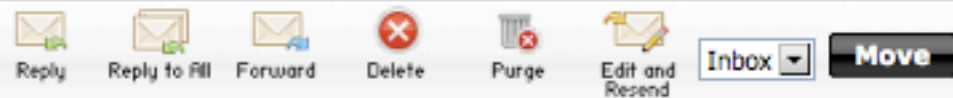
Kimberly Kearney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email upon Petitioner's Attorney, Victor K. Sapphire, Connolly, Bove, Lodge & Hutz, LLP, 333 S. Grand Ave., Suite 2300, Los Angeles, CA 90071 at victor.sapphire@novakdruce.com, trademarks@cblh.com, vsapphire@cblh.com, epritsker@cblh.com, this _13th_ day of __August__, 2013



Kimberly Kearney



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Subject: Settlement Proposal Regarding Cancellation Proceeding #92053298 -For "What Would Jesus Do"
From: <kimk@hollywoodsouthproductions.com> ([Add as Preferred Sender](#))
Date: Fri, Jul 19, 2013 4:28 pm
To: ysapphire@novakkdruce.com

Dear Mr. Sapphire,

I am writing you to propose that we arrive at an amenable solution regarding this ongoing cancellation proceeding regarding my trademark for "What Would Jesus Do".

I maintain my resolve to keep this trademark registration, since it is a critical component of my television show.

Though you and/or your client Tyler Perry may see this as just another business coup if you were able to take my mark from me. I must implore you to ask your client to look at this situation a little differently.

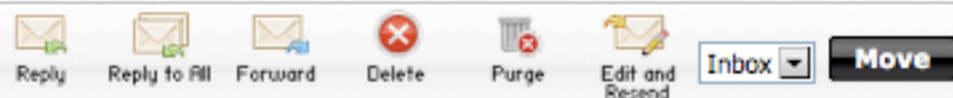
This show bearing this mark is not about money, ego, career or anything else for me. If it were only that, I would have walked away from this nightmare battling him through this proceeding long ago.

But this show is about my calling, to spread God's word, and to help bring people to Christ. This is my mission and my duty as a Christian. Your client professes to be a Christian man as well. That is why I cannot understand why he would even attempt to secure this mark after I presented my television show bearing this mark to him in good faith. It is not only unethical, but it is also un-Christianlike. I admired him, looked up to him and trusted that he would be as excited as I was to use this show as platform to save souls, and bring people to Christ.

Additionally, I cannot believe that with all the success he has had and fortune he has made, that he would be more concerned with using this mark for profitable purposes than to try to find a way that we could either work together on this project or agree to some form of sharing the use of the mark for God's purposes not our own.

For me this is not about money or success, only my purpose to use this show for the glory of God as a Christian should. And I am willing to prove that by proposing that either we come together and compromise on a restricted use of the name which I am willing to do. I am will to use the name only for my show, and the shows marketing purposes, and even concede on any uses that would prevent Mr. Perry from using the name for his purposes. I'm not proposing this because I think he will win this action, I am proposing this because I care more about moving forward with God's purpose for the show than having it continue to be legal entangled in this proceeding which has delayed and prevented it from going forward.

There are hundreds of movies with the same titles, songs with the same titles, there is no reason that we cannot find a resolution to share use this mark if we both have pure intentions. To use this type of mark for any other reason than for the glory of God would be hypocritical, go against any level of true Christian values, and would only show that the intent is to exploit a Christian title only for personal gain and this is just blasphemist!

[Recall](#) [Apply](#)[Sent Items](#) > Message Detail[Print](#)[Previous](#)[Next](#)**Subject:** Settlement Proposal Regarding Cancellation Proceeding #92053298 -For "What Would Jesus Do"**From:** <kimk@hollywoodsouthproductions.com> ([Add as Preferred Sender](#))**Date:** Fri, Jul 19, 2013 4:28 pm**To:** ysapphire@novakdruce.com

I know my only intention w/this project is what I know God put on my heart to do, the world is a mess, people are dying daily and don't know Christ, and this show can reach them, and bring people to Christ.

I leave you with this, the bible says, "what good is it for a man to gain the world, if he loses his soul". And it also says, "it would be easier for a camel to go through the eye of a needle than for a wealthy man to enter heaven". So if your client blocks this show, truly inspired by God, and created for his purpose, and only his purpose, he will be judged accordingly.

The only thing I fear, is God being disappointed in me, so though this has been one of the most stressful and horrific experiences of my life, have caused me to feel physically ill, mentally distressed, and at the point of just giving up on believing in any goodness in mankind.

This project is bigger than you, than me, and Tyler Perry, so we can either come together and do what's right or continue to fight God's will, and face his judgement.

I'm committed to pleasing God, I am tired of crying over it, worrying about, stressing over it, having anxiety of over it, I release this and Tyler Perry to God in his son Jesus' name. And I rest on my faith that God will handle this situation for his good. I can only pray that your client will consider my proposal and do the same.

Please discuss this with him immediately, and let me know your/his decision by July 24, at 12pm PST. If I do not receive a written response from you by then, I will assume you do not want to resolve this matter.

If you do not want to work out a resolution, then please consider this my request to know when your client will be available for his deposition, which I would like to have conducted no later than August 5th, since the trial is ongoing.

Sincerely,

/Kim Kearney/
Owner, What Would Jesus Do

Recall [Apply](#)[Sent Items](#) > Message Detail[Print](#)[Previous](#)[Next](#)**Subject:** Settlement Proposal Regarding Cancellation Proceeding #92053298 -For "What Would Jesus Do"**From:** <kimk@hollywoodsouthproductions.com> ([Add as Preferred Sender](#))**Date:** Fri, Jul 19, 2013 4:28 pm**To:** vsapphire@novakdruce.com

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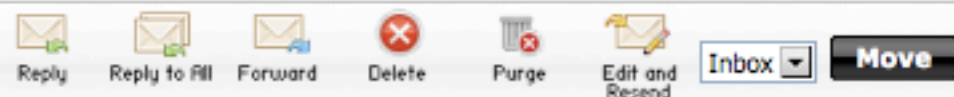
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Sincerely,

/Kim Kearney/
Owner, What Would Jesus Do

Recall [Apply](#)[Sent Items](#) > [Message Detail](#) ☐ Entire thread[Print](#)[Previous](#) [Next](#)Subject: [DEPOSITION SCHEDULING REQUEST FOR TYLER PERRY- RE: CANCELLATION PROCEEDING -#92053298](#)From: <kimk@hollywoodsouthproductions.com> ([Add as Preferred Sender](#))

Date: Wed, Aug 07, 2013 4:19 pm

To: victor.sapphire@novakdruce.com, trademarks@cblh.com, vsapphire@cblh.com, epritsker@cblh.com

Dear Mr. Sapphire,

I am hereby making a 2nd request, for you to please provide available dates for your client Tyler Perry to be deposed in regards to the CANCELLATION PROCEEDING -#92053298 for "WHAT WOULD JESUS DO".

A previous email proposing a resolution was sent to you on July 19, 2013, which also included a request for available dates for deposition of your client, should he not accept or be willing to consider the settlement offer.

You can see a copy of that email pasted below.

Time is of the essence here since there is only a short window of time, only 2 weeks left for my testimony period, so I would like to schedule this deposition no later than August 16th.

I await your reply on or before this coming Friday, August 9th, 2013. I would appreciate your client's voluntary cooperation, so we can finally resolve this matter. We would hope it is not his or your intention to delay, or to obstruct my right to take testimony per the trademark rules, in an effort to defend my position in this proceeding.

Sincerely,

/Kim Kearney/

COPY OF PREVIOUS EMAIL PROPOSING SETTLEMENT & REQUEST AVAILABLE DATES FOR DEPOSITION

Dear Mr. Sapphire,

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I maintain my resolve to keep this trademark registration, since it is a critical component of my television show.